

SENATE EDUCATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 255

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO PUBLIC SCHOOLS; PROVIDING PROCEDURES FOR THE
CONSOLIDATION OF SCHOOL FACILITIES; AMENDING THE PUBLIC SCHOOL
CAPITAL OUTLAY ACT TO ESTABLISH OPTIONAL PROCEDURES FOR
CONSTRUCTION OR RENOVATION PROJECTS FOR ELEMENTARY AND MIDDLE
OR JUNIOR HIGH SCHOOLS THAT MAY RESULT IN SMALLER SCHOOLS;
REQUIRING CERTAIN ADDITIONAL INFORMATION TO ACCOMPANY GRANT
APPLICATIONS RELATED TO THE USE OF EXISTING COMMUNITY
EDUCATIONAL FACILITIES; PROVIDING A CREDIT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 22, Article 5 NMSA
1978 is enacted to read:

"[NEW MATERIAL] SCHOOL FACILITIES CONSOLIDATION--
PROCEDURES--APPROVAL OF SECRETARY.--

A. A local school board may consolidate two or more

.177666.3

underscored material = new
[bracketed material] = delete

1 schools within a school district only if it determines,
2 pursuant to the provisions of this section, that the
3 consolidation is in the best interest of students served by
4 each of the schools proposed to be consolidated.

5 B. The local school board shall prepare a
6 feasibility study examining the likely effects of the
7 consolidation on the education of students in the district and
8 on the community in which the schools are located, including
9 effects on student achievement, student participation in
10 co-curricular activities, student health and well-being,
11 student commuting time and patterns, parental participation in
12 school activities and student learning, annual cost per pupil
13 and total cost per graduate, other costs related to
14 consolidation and other factors related to the educational
15 performance of the schools and students.

16 C. After the preparation of the feasibility study,
17 the local school board shall hold a public hearing in each of
18 the schools proposed to be consolidated in order to receive
19 input from the members of the community that will be affected
20 by the consolidation. Notice of each hearing shall be given by
21 the local school board at least thirty days prior to the
22 hearing date. Notice of each hearing shall be posted at every
23 school affected by the proposed consolidation and published in
24 two consecutive publications one week apart in a newspaper of
25 general circulation in the school district. The notice shall

.177666.3

1 provide:

- 2 (1) the subject of the hearing;
- 3 (2) the time and place of the hearing;
- 4 (3) where interested parties may obtain copies
5 of the feasibility study; and
- 6 (4) the manner in which interested persons may
7 present their views at the hearing.

8 D. At the public hearings, the local school board
9 shall allow all interested persons a reasonable opportunity to
10 submit data, views or arguments, orally or in writing, and to
11 examine witnesses testifying at the hearing.

12 E. Within twenty-one days of the last required
13 public hearing, the local school board, after considering the
14 conclusions of the feasibility study and all input received at
15 the hearings, shall, in writing, decide whether or not to
16 proceed with the proposed school consolidation. If the local
17 school board decides to proceed with the consolidation, it
18 shall forward its decision, the feasibility study and the
19 record of each public hearing to the secretary.

20 F. No school consolidation shall be carried out
21 without the approval of the secretary. The secretary shall
22 only approve the consolidation if the secretary determines that
23 the board's decision is reasonably supported by the feasibility
24 study and the public input and is otherwise in accordance with
25 applicable laws and rules."

.177666.3

1 Section 2. Section 22-24-5 NMSA 1978 (being Laws 1975,
2 Chapter 235, Section 5, as amended) is amended to read:

3 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
4 APPLICATION--GRANT ASSISTANCE.--

5 A. Applications for grant assistance, approval of
6 applications, prioritization of projects and grant awards shall
7 be conducted pursuant to the provisions of this section.

8 B. Except as provided in Sections 22-24-4.3,
9 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
10 govern grant assistance from the fund for a public school
11 capital outlay project not wholly funded pursuant to Section
12 22-24-4.1 NMSA 1978:

13 (1) all school districts are eligible to apply
14 for funding from the fund, regardless of percentage of
15 indebtedness;

16 (2) priorities for funding shall be determined
17 by using the statewide adequacy standards developed pursuant to
18 Subsection C of this section; provided that:

19 (a) the council shall apply the
20 standards to charter schools to the same extent that they are
21 applied to other public schools; and

22 (b) in an emergency in which the health
23 or safety of students or school personnel is at immediate risk
24 or in which there is a threat of significant property damage,
25 the council may award grant assistance for a project using

.177666.3

1 criteria other than the statewide adequacy standards;

2 (3) the council shall establish criteria to be
3 used in public school capital outlay projects that receive
4 grant assistance pursuant to the Public School Capital Outlay
5 Act. In establishing the criteria, the council shall consider:

6 (a) the feasibility of using design,
7 build and finance arrangements for public school capital outlay
8 projects;

9 (b) the potential use of more durable
10 construction materials that may reduce long-term operating
11 costs;

12 (c) concepts that promote efficient but
13 flexible utilization of space, including joint use of
14 reasonably accessible community educational facilities; and

15 (d) any other financing or construction
16 concept that may maximize the dollar effect of the state grant
17 assistance on student performance, including the construction
18 or renovation of elementary and middle or junior high schools
19 that would accommodate no more than four hundred students;

20 (4) no more than ten percent of the combined
21 total of grants in a funding cycle shall be used for
22 retrofitting existing facilities for technology infrastructure;

23 (5) except as provided in Paragraph (6), (8)
24 or (9) of this subsection, the state share of a project
25 approved and ranked by the council shall be funded within

.177666.3

1 available resources pursuant to the provisions of this
2 paragraph. No later than May 1 of each calendar year, a value
3 shall be calculated for each school district in accordance with
4 the following procedure:

5 (a) the final prior year net taxable
6 value for a school district divided by the MEM for that school
7 district is calculated for each school district;

8 (b) the final prior year net taxable
9 value for the whole state divided by the MEM for the state is
10 calculated;

11 (c) excluding any school district for
12 which the result calculated pursuant to Subparagraph (a) of
13 this paragraph is more than twice the result calculated
14 pursuant to Subparagraph (b) of this paragraph, the results
15 calculated pursuant to Subparagraph (a) of this paragraph are
16 listed from highest to lowest;

17 (d) the lowest value listed pursuant to
18 Subparagraph (c) of this paragraph is subtracted from the
19 highest value listed pursuant to that subparagraph;

20 (e) the value calculated pursuant to
21 Subparagraph (a) of this paragraph for the subject school
22 district is subtracted from the highest value listed in
23 Subparagraph (c) of this paragraph;

24 (f) the result calculated pursuant to
25 Subparagraph (e) of this paragraph is divided by the result

.177666.3

1 calculated pursuant to Subparagraph (d) of this paragraph;

2 (g) the sum of the property tax mill
3 levies for the prior tax year imposed by each school district
4 on residential property pursuant to Chapter 22, Article 18 NMSA
5 1978, the Public School Capital Improvements Act, the Public
6 School Buildings Act, the Education Technology Equipment Act
7 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
8 is calculated for each school district;

9 (h) the lowest value calculated pursuant
10 to Subparagraph (g) of this paragraph is subtracted from the
11 highest value calculated pursuant to that subparagraph;

12 (i) the lowest value calculated pursuant
13 to Subparagraph (g) of this paragraph is subtracted from the
14 value calculated pursuant to that subparagraph for the subject
15 school district;

16 (j) the value calculated pursuant to
17 Subparagraph (i) of this paragraph is divided by the value
18 calculated pursuant to Subparagraph (h) of this paragraph;

19 (k) if the value calculated for a
20 subject school district pursuant to Subparagraph (j) of this
21 paragraph is less than five-tenths, then, except as provided in
22 Subparagraph (n) or (o) of this paragraph, the value for that
23 school district equals the value calculated pursuant to
24 Subparagraph (f) of this paragraph;

25 (l) if the value calculated for a

.177666.3

1 subject school district pursuant to Subparagraph (j) of this
2 paragraph is five-tenths or greater, then that value is
3 multiplied by five-hundredths;

4 (m) if the value calculated for a
5 subject school district pursuant to Subparagraph (j) of this
6 paragraph is five-tenths or greater, then the value calculated
7 pursuant to Subparagraph (l) of this paragraph is added to the
8 value calculated pursuant to Subparagraph (f) of this
9 paragraph. Except as provided in Subparagraph (n) or (o) of
10 this paragraph, the sum equals the value for that school
11 district;

12 (n) in those instances in which the
13 calculation pursuant to Subparagraph (k) or (m) of this
14 paragraph yields a value less than one-tenth, one-tenth shall
15 be used as the value for the subject school district;

16 (o) in those instances in which the
17 calculation pursuant to Subparagraph (k) or (m) of this
18 paragraph yields a value greater than one, one shall be used as
19 the value for the subject school district;

20 (p) except as provided in Section
21 22-24-5.7 NMSA 1978 and except as adjusted pursuant to
22 Paragraph (6), (8) or (9) of this subsection, the amount to be
23 distributed from the fund for an approved project shall equal
24 the total project cost multiplied by a fraction the numerator
25 of which is the value calculated for the subject school

.177666.3

1 district in the current year plus the value calculated for that
2 school district in each of the two preceding years and the
3 denominator of which is three; and

4 (q) as used in this paragraph: 1) "MEM"
5 means the average full-time-equivalent enrollment of students
6 attending public school in a school district on the eightieth
7 and one hundred twentieth days of the prior school year; 2)
8 "total project cost" means the total amount necessary to
9 complete the public school capital outlay project less any
10 insurance reimbursement received by the school district for the
11 project; and 3) in the case of a state-chartered charter school
12 that has submitted an application for grant assistance pursuant
13 to this section, the "value calculated for the subject school
14 district" means the value calculated for the school district in
15 which the state-chartered charter school is physically located;

16 (6) the amount calculated pursuant to
17 Subparagraph (p) of Paragraph (5) of this subsection shall be
18 reduced by the following procedure:

19 (a) the total of all legislative
20 appropriations made after January 1, 2003 for nonoperating
21 purposes either directly to the subject school district or to
22 another governmental entity for the purpose of passing the
23 money through directly to the subject school district, and not
24 rejected by the subject school district, is calculated;
25 provided that: 1) an appropriation made in a fiscal year shall

.177666.3

1 be deemed to be accepted by a school district unless, prior to
2 June 1 of that fiscal year, the school district notifies the
3 department of finance and administration and the public
4 education department that the district is rejecting the
5 appropriation; 2) the total shall exclude any educational
6 technology appropriation made prior to January 1, 2005 unless
7 the appropriation was on or after January 1, 2003 and not
8 previously used to offset distributions pursuant to the
9 Technology for Education Act; 3) the total shall exclude any
10 appropriation previously made to the subject school district
11 that is reauthorized for expenditure by another recipient; 4)
12 the total shall exclude one-half of the amount of any
13 appropriation made or reauthorized after January 1, 2007 if the
14 purpose of the appropriation or reauthorization is to fund, in
15 whole or in part, a capital outlay project that, when
16 prioritized by the council pursuant to this section either in
17 the immediately preceding funding cycle or in the current
18 funding cycle, ranked in the top one hundred fifty projects
19 statewide; 5) the total shall exclude the proportionate share
20 of any appropriation made or reauthorized after January 1, 2008
21 for a capital project that will be jointly used by a
22 governmental entity other than the subject school district.
23 Pursuant to criteria adopted by rule of the council and based
24 upon the proposed use of the capital project, the council shall
25 determine the proportionate share to be used by the

.177666.3

underscoring material = new
[bracketed material] = delete

1 governmental entity and excluded from the total; and 6) unless
2 the grant award is made to the state-chartered charter school
3 or unless the appropriation was previously used to calculate a
4 reduction pursuant to this paragraph, the total shall exclude
5 appropriations made after January 1, 2007 for nonoperating
6 purposes of a specific state-chartered charter school,
7 regardless of whether the charter school is a state-chartered
8 charter school at the time of the appropriation or later opts
9 to become a state-chartered charter school;

10 (b) the applicable fraction used for the
11 subject school district and the current calendar year for the
12 calculation in Subparagraph (p) of Paragraph (5) of this
13 subsection is subtracted from one;

14 (c) the value calculated pursuant to
15 Subparagraph (a) of this paragraph for the subject school
16 district is multiplied by the amount calculated pursuant to
17 Subparagraph (b) of this paragraph for that school district;

18 (d) the total amount of reductions for
19 the subject school district previously made pursuant to
20 Subparagraph (e) of this paragraph for other approved public
21 school capital outlay projects is subtracted from the amount
22 calculated pursuant to Subparagraph (c) of this paragraph; and

23 (e) the amount calculated pursuant to
24 Subparagraph (p) of Paragraph (5) of this subsection shall be
25 reduced by the amount calculated pursuant to Subparagraph (d)

.177666.3

1 of this paragraph;

2 (7) as used in this subsection:

3 (a) "community educational facility"
4 means any non-classroom space designed to support educational
5 programs, including physical education facilities, sports
6 fields, gymnasiums, swimming pools, performing arts facilities,
7 fine arts facilities, libraries and media centers;

8 ~~[(a)]~~ (b) "governmental entity" includes
9 an Indian nation, tribe or pueblo; and

10 ~~[(b)]~~ (c) "subject school district"
11 means the school district that has submitted the application
12 for funding and in which the approved public school capital
13 outlay project will be located;

14 (8) the amount calculated pursuant to
15 Subparagraph (p) of Paragraph (5) of this subsection, after any
16 reduction pursuant to Paragraph (6) of this subsection, may be
17 increased by an additional five percent if the council finds
18 that:

19 (a) the subject school district has been
20 exemplary in implementing and maintaining a preventive
21 maintenance program; or

22 (b) the construction project for a new
23 school will include in its design the joint use of reasonably
24 accessible community educational facilities.

25 The council shall adopt such rules as are necessary to

1 implement the provisions of this paragraph;

2 (9) the council may adjust the amount of local
3 share otherwise required if it determines that a school
4 district has used all of its local resources. Before making
5 any adjustment to the local share, the council shall consider
6 whether:

7 (a) the school district has insufficient
8 bonding capacity over the next four years to provide the local
9 match necessary to complete the project and, for all
10 educational purposes, has a residential property tax rate of at
11 least ten dollars (\$10.00) on each one thousand dollars
12 (\$1,000) of taxable value, as measured by the sum of all rates
13 imposed by resolution of the local school board plus rates set
14 to pay interest and principal on outstanding school district
15 general obligation bonds;

16 (b) the school district: 1) has fewer
17 than an average of eight hundred full-time-equivalent students
18 on the eightieth and one hundred twentieth days of the prior
19 school year; 2) has at least seventy percent of its students
20 eligible for free or reduced-fee lunch; 3) has a share of the
21 total project cost, as calculated pursuant to provisions of
22 this section, that would be greater than fifty percent; and 4)
23 for all educational purposes, has a residential property tax
24 rate of at least seven dollars (\$7.00) on each one thousand
25 dollars (\$1,000) of taxable value, as measured by the sum of

.177666.3

1 all rates imposed by resolution of the local school board plus
2 rates set to pay interest and principal on outstanding school
3 district general obligation bonds; or

4 (c) the school district: 1) has an
5 enrollment growth rate over the previous school year of at
6 least two and one-half percent; 2) pursuant to its five-year
7 facilities plan, will be building a new school within the next
8 two years; and 3) for all educational purposes, has a
9 residential property tax rate of at least ten dollars (\$10.00)
10 on each one thousand dollars (\$1,000) of taxable value, as
11 measured by the sum of all rates imposed by resolution of the
12 local school board plus rates set to pay interest and principal
13 on outstanding school district general obligation bonds; ~~and~~

14 (10) the council may provide a credit against
15 the amount of local share otherwise required by up to five
16 percent of the project cost if the new school construction
17 project:

18 (a) is for an elementary or middle or
19 junior high school; and

20 (b) is designed to accommodate no more
21 than four hundred students;

22 (11) if the new school construction project
23 provided for in Paragraph (10) of this subsection:

24 (a) will serve a student population: 1)
25 where at least seventy percent are eligible for free or

1 reduced-fee lunch; 2) that demonstrates a high mobility rate,
 2 as defined by the council; and 3) has a high rate of English
 3 language learners, as defined by the department; then

4 (b) it shall be designed to accommodate
 5 no more than four hundred students, and the council shall
 6 provide a credit against the amount of local share otherwise
 7 required by five percent of the project cost, unless the
 8 applicant provides a compelling justification, considering
 9 student outcomes and not solely financial or economic factors,
 10 for why it must accommodate more than four hundred students;

11 ~~[(10)]~~ (12) no application for grant
 12 assistance from the fund shall be approved unless the council
 13 determines that:

14 (a) the public school capital outlay
 15 project is needed and included in the school district's
 16 five-year facilities plan among its top priorities;

17 (b) the school district has used its
 18 capital resources in a prudent manner;

19 (c) the school district has provided
 20 insurance for buildings of the school district in accordance
 21 with the provisions of Section 13-5-3 NMSA 1978;

22 (d) the school district has submitted a
 23 five-year facilities plan that includes: 1) enrollment
 24 projections; 2) a current preventive maintenance plan that has
 25 been approved by the council pursuant to Section 22-24-5.3 NMSA

.177666.3

1 1978 and that is followed by each public school in the
2 district; 3) the capital needs of charter schools located in
3 the school district; and 4) projections for the facilities
4 needed in order to maintain a full-day kindergarten program;

5 (e) the school district is willing and
6 able to pay any portion of the total cost of the public school
7 capital outlay project that, according to Paragraph (5), (6),
8 (8) or (9) of this subsection, is not funded with grant
9 assistance from the fund; provided that school district funds
10 used for a project that was initiated after September 1, 2002
11 when the statewide adequacy standards were adopted, but before
12 September 1, 2004 when the standards were first used as the
13 basis for determining the state and school district share of a
14 project, may be applied to the school district portion required
15 for that project;

16 (f) the application includes the capital
17 needs of any charter school located in the school district or
18 the school district has shown that the facilities of the
19 charter school have a smaller deviation from the statewide
20 adequacy standards than other district facilities included in
21 the application; ~~and~~

22 (g) the school district has agreed, in
23 writing, to comply with any reporting requirements or
24 conditions imposed by the council pursuant to Section 22-24-5.1
25 NMSA 1978; and

.177666.3

1 (h) if the application is for a new
2 school, the application includes: 1) an analysis of the
3 number, type, location and capacity of community educational
4 facilities reasonably accessible to the proposed school; 2) a
5 plan for how the new school will use the community educational
6 facilities identified in Item 1) of this subparagraph; and 3)
7 if the new school will not be using any of the identified
8 community educational facilities, an explanation of why it will
9 not be using them; and

10 (13) notwithstanding the statewide adequacy
11 standards, an application for grant assistance from the fund
12 where two or more elementary or middle or junior high schools
13 are designed to share a single parcel of land and core
14 facilities may be approved as long as no single school exceeds
15 four hundred students.

16 C. After consulting with the public school capital
17 outlay oversight task force and other experts, the council
18 shall regularly review and update statewide adequacy standards
19 applicable to all school districts. The standards shall
20 establish the acceptable level for the physical condition and
21 capacity of buildings, the educational suitability of
22 facilities and the need for technological infrastructure.
23 Except as otherwise provided in the Public School Capital
24 Outlay Act, the amount of outstanding deviation from the
25 standards shall be used by the council in evaluating and

.177666.3

1 prioritizing public school capital outlay projects.

2 D. The acquisition of a facility by a school
3 district or charter school pursuant to a financing agreement
4 that provides for lease payments with an option to purchase for
5 a price that is reduced according to lease payments made may be
6 considered a public school capital outlay project and eligible
7 for grant assistance under this section pursuant to the
8 following criteria:

9 (1) no grant shall be awarded unless the
10 council finds that, prior to the purchase of the facility by
11 the school district or charter school, the facility will equal
12 or exceed the statewide adequacy standards and the building
13 standards for public school facilities;

14 (2) no grant shall be awarded unless the
15 school district and the need for the facility meet all of the
16 requirements for grant assistance pursuant to the Public School
17 Capital Outlay Act;

18 (3) the total project cost shall equal the
19 total payments that would be due under the agreement if the
20 school district or charter school would eventually acquire
21 title to the facility;

22 (4) the portion of the total project cost to
23 be paid from the fund may be awarded as one grant, but
24 disbursements from the fund shall be made from time to time as
25 lease payments become due;

.177666.3

1 (5) the portion of the total project cost to
2 be paid by the school district or charter school may be paid
3 from time to time as lease payments become due; and

4 (6) neither a grant award nor any provision of
5 the Public School Capital Outlay Act creates a legal obligation
6 for the school district or charter school to continue the lease
7 from year to year or to purchase the facility.

8 E. In order to encourage private capital investment
9 in the construction of public school facilities, the purchase
10 of a privately owned school facility that is, at the time of
11 application, in use by a school district may be considered a
12 public school capital outlay project and eligible for grant
13 assistance pursuant to this section if the council finds that:

14 (1) at the time of the initial use by the
15 school district, the facility to be purchased equaled or
16 exceeded the statewide adequacy standards and the building
17 standards for public school facilities;

18 (2) at the time of application, attendance at
19 the facility to be purchased is at seventy-five percent or
20 greater of design capacity and the attendance at other schools
21 in the school district that the students at the facility would
22 otherwise attend is at eighty-five percent or greater of design
23 capacity; and

24 (3) the school district and the capital outlay
25 project meet all of the requirements for grant assistance

.177666.3

1 pursuant to the Public School Capital Outlay Act; provided
2 that, when determining the deviation from the statewide
3 adequacy standards for the purposes of evaluating and
4 prioritizing the project, the students using the facility shall
5 be deemed to be attending other schools in the school district.

6 F. It is the intent of the legislature that grant
7 assistance made pursuant to this section allows every school
8 district to meet the standards developed pursuant to Subsection
9 C of this section; provided, however, that nothing in the
10 Public School Capital Outlay Act or the development of
11 standards pursuant to that act prohibits a school district from
12 using local funds to exceed the statewide adequacy standards.

13 G. Upon request, the council shall work with, and
14 provide assistance and information to, the public school
15 capital outlay oversight task force.

16 H. The council may establish committees or task
17 forces, not necessarily consisting of council members, and may
18 use the committees or task forces, as well as existing agencies
19 or organizations, to conduct studies, conduct surveys, submit
20 recommendations or otherwise contribute expertise from the
21 public schools, programs, interest groups and segments of
22 society most concerned with a particular aspect of the
23 council's work.

24 I. Upon the recommendation of the public school
25 facilities authority, the council shall develop building

.177666.3

1 standards for public school facilities and shall promulgate
2 other such rules as are necessary to carry out the provisions
3 of the Public School Capital Outlay Act.

4 J. No later than December 15 of each year, the
5 council shall prepare a report summarizing its activities
6 during the previous fiscal year. The report shall describe in
7 detail all projects funded, the progress of projects previously
8 funded but not completed, the criteria used to prioritize and
9 fund projects and all other council actions. The report shall
10 be submitted to the public education commission, the governor,
11 the legislative finance committee, the legislative education
12 study committee and the legislature."

13 - 21 -
14
15
16
17
18
19
20
21
22
23
24
25